

**DYTM TENGKU IDRIS SHAH IBNI
SULTAN SALAHUDDIN ABDUL AZIZ SHAH**

a

v.

DIKIM HOLDINGS SDN BHD & ANOR

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FEDERAL COURT, KUALA LUMPUR
AHMAD FAIRUZ CJ (MALAYA)
HAIDAR MOHD NOOR FCJ
DENIS ONG JCA
[SPECIAL CASE NO: 02-2001]
6 FEBRUARY 2002

c

CONSTITUTIONAL LAW: *Suit involving Regent of State - Jurisdiction of court - Whether Special Court with exclusive jurisdiction to adjudicate on Regent's claim - Whether Regent is "Ruler" under art. 160 for the purposes of arts. 181, 182 and 183 of Federal Constitution - Interpretation of "Ruler" - Whether literal interpretation results in ambiguity - Whether purposive approach preferred - Whether Hansard used as an aid to construction*

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STATUTORY INTERPRETATION: *Construction of statutes - Interpretation of "Ruler" under art. 160 for the purposes of arts. 181, 182 and 183 of Federal Constitution - Whether persons exercising functions of "Ruler" have exclusive recourse to Special Court involving their claims - Whether literal interpretation results in ambiguity - Whether purposive approach preferred - Whether Hansard used as an aid to construction*

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The plaintiff filed a writ of summons and statement of claim against both the defendants and the defendants' filed a defence and counterclaim thereto. A reply and a defence to the counterclaim was also filed. Subsequently, the plaintiff was appointed the Regent of Selangor upon the appointment of the plaintiff's father to the throne as the 11th Yang di-Pertuan Agong. The High Court then referred the following issues to the Federal Court for determination under s. 84 of the Courts of Judicature Act 1964, *inter alia*, whether the plaintiff came within the meaning of "Ruler" under art. 160 for the purposes of arts. 181(1), 182 and 183 of the Federal Constitution ('the Constitution') by virtue of his appointment thereof, and whether the plaintiff's claim should be adjudicated in the Special Court to the exclusion of the High Court of Malaya.

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a **Held:**

Per Haidar Mohd Noor FCJ

- b* [1] The original art. 181(2) of the Constitution is meant to accord legal immunity to the Ruler of a State and not to any person exercising the functions of a Ruler. This is clearly shown by the exception to the meaning of “Ruler” in art. 160(2) para. (b) of the Constitution which would otherwise include any person exercising the functions of the Ruler of a State. (p 67 c)
- c* [2] The purpose of the amendment to art. 181(2) of the Constitution was to take away the legal immunity hitherto enjoyed by the Ruler in respect of anything done or omitted to be done by him in his personal capacity. Articles 182 and 183 were added in view of the amendment to art. 181(2) of the Constitution. Any action or omission on the part of the Ruler of a State in his personal capacity, be it civil or criminal, is now subject to the exclusive jurisdiction of the
- d* Special Court to the exclusion of the High Court. (pp 66 g & 67 b)
- e* [3] A person exercising the functions of a Ruler of a State cannot be said to possess sovereignty (*Dato’ Menteri Othman bin Baginda & Anor v. Dato’ Ombi Syed Alwi bin Syed Idrus*, FC). Sovereignty is personal to the Ruler. (p 68 b)
- f* [4] A literal interpretation of the meaning of “Ruler” in art. 160(2) of the Constitution will lead to ambiguity and absurdity. The reason being, a Regent exercising the functions of the Ruler is not a Ruler for the purposes of art. 181(2), the Third Schedule and the Fifth Schedule of the Constitution and hence the Regent can be sued in the ordinary courts as the establishment of the Special Court by the amendment to art. 181(2) is exclusively reserved to the Rulers personally; but for the purposes of arts. 182 and 183, the Regent is the Ruler and shall sue or be sued in the Special Court for the reason that the meaning of “Ruler” in art. 160(2) para. (b) remains intact.
- g* (p 72 b-c)
- h* [4a] There is also the prerogative of the Ruler to appoint a Council of Regency instead of a Regent under cl. 4 of art. 21 of the Laws of the Constitution of Selangor 1959. This provision is common to all the Malay States. In the event a Council of Regency is appointed, it could not be intended that the members of the Council of Regency when collectively exercising the functions of the Ruler is a “Ruler” for the purposes of arts. 181, 182 and 183 of the Constitution. Further, a member of the Council of Regency need not be appointed from members of the Royalty and so it could not be intended that
- i* an ordinary person would also come within the meaning of “Ruler”. (pp 72 h & 73 a)

- [5] The purposive approach has been given statutory recognition by Parliament enacting s. 17A in the Interpretation Acts 1948 & 1967. In view of this statutory recognition, the court can and should adopt a purposive approach in the interpretation of “Ruler” for the purposes of arts. 181, 182 and 183 of the Constitution. (p 73 d) **a**
- [6] The important matter that needs to be considered is the purpose or object of the establishment of the Special Court, which is the amendment to art. 181(2) of the Constitution. Once the object or purpose is determined, it follows that the Special Court stated under Part XV must necessarily be read with the object or purpose of the amendment to art. 181(2). Such a construction will promote the general legislative purpose underlying the provision in line with s. 17A of the Interpretation Acts 1948 & 1967. (p 73 f) **b**
- [6a] Once such a construction is given, the word “Ruler” in arts. 182 and 183 should and must mean “Ruler” referred to in art. 181(2) read with art. 160(2) para. (b). It is not disputed that “Ruler” under art. 160(2) para. (b) for the purposes of art. 181(2) excludes a person exercising the functions of the Ruler and it follows therefore that “Ruler” under arts. 182 and 183 is not intended to include a person exercising the functions of the Ruler as in the case of the plaintiff herein. The exclusive jurisdiction of the Special Court as envisaged in the amendment to art. 181(2) is to be accorded to the Ruler and not to a person exercising the functions of the Ruler by virtue of the exception to art. 160(2) para. (b) of the Constitution. To read art. 182(2) in isolation without reference to the intent and purpose of the amendment to art. 181(2) would lead to an absurd situation for the reasons stated above. (p 73 g-h) **c**
- [7] It is also permissible for the courts as held by the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn Bhd*, to resort to the Hansard as an aid to interpretation. Therefore, the policy speech of the Minister when tabling the Bill for the purpose or the object of the Bill as an aid to interpretation can be resorted to. (p 74 b) **d**
- [7a] From a perusal of the speech of the Prime Minister at page 13986 of the Hansard, it was clear that no mention was made at all that the exclusive jurisdiction given to the Special Court to the exclusion of the ordinary courts in respect of the Ruler is to include a person exercising the functions of the Ruler. The mischief that was aimed by the amendment to art. 181(2) and the addition of arts. 182 and 183 was to take away the legal immunity hitherto enjoyed by the Rulers and the establishment of the Special Court was a compromise. **e**
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- a* It is clear therefore that only the Rulers and not the persons exercising the functions of the Rulers have the exclusive recourse to the Special Court. (pp 75 f-h & 76 a)

[Each party to bear his own costs of proceedings herein.]

- b* **[Bahasa Malaysia Translation Of Headnotes]**

- Plaintif telah memfailkan writ saman dan pernyataan tuntutan terhadap kedua-dua defendan dan pihak defendan telah memfailkan pembelaan dan tuntutan-balas. Balasan dan pembelaan kepada tuntutan-balas atas tindakan ini juga telah difailkan. Kemudian, plaintif telah dilantik sebagai Pemangku Raja Selangor apabila ayahanda plaintif ditabalkan menjadi Yang Di-Pertuan Agong yang ke-11. Mahkamah Tinggi telah merujuk isu-isu berikut kepada Mahkamah Persekutuan untuk diputuskan di bawah s. 84 Akta Mahkamah Kehakiman 1964, antara lain sama ada plaintif tergolong di dalam definisi “Ruler” di bawah art. 160 bagi tujuan art. 181(1), 182 dan 183 Perlembagaan Persekutuan atas sebab perantikan tersebut dan sama ada tuntutan plaintif tersebut sepatutnya diputuskan di Mahkamah Khas dan terkecuali daripada Mahkamah Tinggi di Malaya.
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Diputuskan:

- e* **Oleh Haidar Mohd Noor HMP**

- f* [1] Pada asalnya art. 181(2) Perlembagaan Persekutuan bertujuan memberi imuniti undang-undang kepada raja sesebuah negeri dan bukannya terhadap sesiapa yang melaksanakan tugas-tugas raja. Ini dapat dilihat dengan jelas dalam pengecualian kepada definisi “Ruler” dalam art. 160(2) perenggan (b) Perlembagaan Persekutuan yang tidak termasuk seseorang yang menjalankan tugas-tugas raja.
- g* [2] Tujuan pindaan terhadap art. 181(2) Perlembagaan Persekutuan tersebut adalah untuk menarik-balik imuniti undang-undang yang dinikmati sehingga kini oleh seorang raja dalam segala perbuatan atau kelalaian yang dilakukannya dalam kapasiti peribadi. Artikel 182 dan 183 ditambah kerana ia berkaitan dengan pindaan kepada art. 181(2) Perlembagaan Persekutuan. Kini segala perlakuan atau kelalaian seseorang raja dalam kapasiti peribadi sama ada secara sivil atau jenayah adalah tertakluk dalam bidangkuasa eksklusif Mahkamah Khas dan terkecuali daripada Mahkamah Tinggi.
- h*
- i* [3] Seorang yang menjalankan tugas-tugas raja tidak boleh dikatakan mempunyai kedaulatan (*Dato’ Menteri Othman Baginda & Anor v. Dato’ Ombi Syed Alwi bin Syed Idrus, FC*) kerana ianya adalah hak persendirian seorang raja.

- [4] Tafsiran harafiah akan maksud “Ruler” di art. 160 (2) Perlembagaan Persekutuan akan menjadikannya samar dan tidak munasabah kerana seorang Pemangku Raja yang menjalankan tugas raja bukanlah seorang raja bagi tujuan art. 181(2), Jadual Ketiga dan Jadual Kelima Perlembagaan Persekutuan dan bolehlah disaman dalam mahkamah biasa memandangkan Mahkamah Khas yang ditubuhkan melalui pindaan kepada art. 181(2) adalah khusus untuk raja-raja sahaja; tetapi bagi tujuan art. 182 dan 183, seorang pemangku raja adalah raja dan mestilah memfailkan saman atau disaman dalam Mahkamah Khas atas sebab definasi “Ruler” dalam art. 160(2) perenggan (b) masih sempurna. a
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- [4a] Sebalik melantik pemangku raja, raja berprerogatif untuk melantik Majlis Pemangku Raja mengikut klausa 4 art. 21 Perlembagaan Negeri Selangor 1959. Peruntukkan ini adalah terpakai kepada semua Negeri-negeri Melayu. Sekiranya perlantikan Majlis ini dibuat, ianya bukanlah bertujuan bahawa ahli-ahli Majlis tersebut apabila secara bersesama melaksanakan tugas-tugas raja adalah seorang “Ruler” bagi maksud art. 181, 182 dan 183 Perlembagaan Persekutuan. Tambahan pula ahli Majlis tidak semestinya dilantik dari golongan kerabat diraja dan tidak mungkin ianya bertujuan supaya rakyat biasa juga tergolong dalam definasi “Ruler”. d
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- [5] Pendekatan bermatlamat telah diberikan pengiktirafan statutori oleh Parlimen dengan mengubal s. 17A Akta Tafsiran 1948 & 1967. Dengan pengiktirafan statutori ini, Mahkamah dapat dan seharusnya menerima pendekatan bermatlamat ini dalam menginterpretasi “Ruler” bagi tujuan art. 181, 182 dan 183 Perlembagaan Persekutuan. f
- [6] Isu penting yang perlu diberikan perhatian adalah tujuan atau objek penubuhan Mahkamah Khas ini, iaitu pindaan kepada art. 181(2) Perlembagaan Persekutuan. Apabila objek atau tujuan ini dikenalpasti, kesimpulannya adalah Mahkamah Khas yang dinyatakan di bawah Bahagian XV perlulah dibaca bersama objek atau tujuan pindaan atas art. 181(2). Penyusunan sedemikian akan menggalakkan maksud perundangan secara am yang mendasari peruntukan tersebut sejajar dengan s. 17A Akta Tafsiran 1948 & 1967. g
- [6a] Apabila penyusunan sebegini diberikan, ayat “Ruler” dalam art. 182 dan 183 mestilah bermaksud “Ruler” yang dirujuk di art. 181(2) yang dibaca bersama art. 160(2) perenggan (b). Adalah tidak dipertikaikan bahawa “Ruler” di bawah art. 160(2) perenggan (b) bagi tujuan art. 181(2) tidak termasuk seseorang yang menjalankan tugas-tugas raja dan perkataan “Ruler” di art. 182 dan 183 tidak bertujuan untuk h
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- a* menggolongkan seseorang yang menjalankan tugas-tugas raja seperti plaintif dalam kes ini. Bidangkuasa eksklusif Mahkamah Khas seperti yang dibayangkan dalam pindaan kepada art. 181(2) adalah khas untuk raja dan bukan kepada seseorang yang menjalankan tugas-tugas raja atas sebab pengecualian kepada art. 160(2) perenggan (b)
- b* Perlembagaan Persekutuan. Membaca art. 182(2) sahaja tanpa merujuk kepada maksud dan tujuan pindaan ke atas art. 181(2) akan membawa kepada situasi yang mustahil atas alasan-alasan yang dinyatakan di atas.
- c* [7] Mahkamah juga dibenarkan untuk merujuk kepada Hansard bagi tujuan membantu dalam penterjemahan seperti yang diputuskan oleh Mahkamah Persekutuan dalam *Chor Phaik Har v. Farlim Properties Sdn Bhd*. Oleh itu ucapan dasar Menteri apabila membentangkan bil boleh digunakan sekiranya tujuan atau objek bil tersebut adalah sebagai bantuan dalam penterjemahan.
- d* [7a] Melalui penelitian atas ucapan Perdana Menteri dalam Hansard di mukasurat 13986, jelas tidak menyebutkan bahawa bidangkuasa eksklusif yang diberikan kepada Mahkamah Khas yang terkecuali daripada mahkamah-mahkamah biasa berkenaan raja termasuk seseorang yang menjalankan tugas-tugas raja. Pindaan kepada art. 181(2) dan penambahan art. 182 dan 183 bertujuan untuk menarik-balik imuniti undang-undang yang dinikmati sehingga kini oleh raja-raja dan penubuhan Mahkamah Khas adalah sebagai kompromi. Dengan demikian adalah jelas bahawa hanya raja-raja dan bukanlah seseorang yang menjalankan tugas-tugas raja mempunyai perlindungan eksklusif di Mahkamah Khas.
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- f*

[Setiap parti menanggung kos prosiding masing-masing.]

Case(s) referred to:

- Chor Phaik Har v. Farlim Properties Sdn Bhd* [1994] 4 CLJ 285 (*refd*)
- g* *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus* [1981] 1 MLJ 29 (*refd*)
- Lam Kong Co Ltd v. Thong Guan Co Ptd Ltd* [2000] 3 CLJ 769 (*foll*)
- Northman v. Barnet Council* [1978] 1 WLR 221 (*refd*)
- Pepper v. Hart* [1993] 1 All ER 42 (*refd*)
- h* *United Hokkien Cemeteries, Penang v. Majlis Bandaran, Pulau Pinang* [197] 2 MLJ 121 (*refd*)
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Legislation referred to:

Courts of Judicature Act 1964, ss. 68(1)(a), 84(2)
Federal Constitution, arts. 32, 160(2)(b), 181(1), (2), 182, 183
Interpretation Acts 1948 & 1967, s. 17A
Interpretation (Amendment) Act 1993, s. 2
Laws of the Constitution of Selangor 1959, art. 21(4)

For the appellant - Low Chi Cheng (Wong Yoke Ping); M/s Lim Kian Leong & Co

For the defendants - Bastian Vendargon (Philip Chai & Dhayana Shila); M/s Soo Thien Ming & Nashran

[Appeal from High Court, Kuala Lumpur; Suit No: D1-22-1350-1998]

Reported by Usha Thiagarajah

JUDGMENT

Haidar Mohd Noor FCJ:

The matter before us is in respect of a reference of constitutional questions by the High Court pursuant to s. 84 of the Courts of Judicature Act 1964 (Act 91) (“CJA”).

It was agreed by the parties as per order dated 30 July 2001 that the following questions be referred to the Federal Court for determination under s. 84 of the CJA:

1. Whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as “Sultan” is a “Ruler” for the purposes of arts. 181, 182 and 183 of the Federal Constitution (as amended by AM Act A848) having regard to the aforesaid provisions and the interpretation of “Ruler” as defined in art. 160 of the Federal Constitution?
2. If the answer to (1) is in the affirmative, does the Special Court have **exclusive jurisdiction** to adjudicate on the plaintiff’s claim to the exclusion of the High Court of Malaya?
3. If the answer to (1) or (2) above is in the affirmative does the Special Court have **exclusive jurisdiction** to adjudicate on the defendant’s counterclaim to exclusion of the High Court of Malaya (subject to the Attorney General’s consent pursuant to art. 183 Federal Constitution)?
4. If the answer to (2) or (3) above is in the negative do the ordinary courts which are constituted under Part IX of the Federal Constitution have jurisdiction to adjudicate on the plaintiff’s claim and the defendant’s counterclaim?

a There are other terms also embodied in the order dated 30 July 2001, *inter alia*, on costs. It was also ordered that all proceedings be stayed pending the decision of the Federal Court.

b In order to assist the Federal Court in deciding the questions and as is provided by s. 84(2) of the CJA, the following statement of agreed facts was filed therein by the parties:

c 1. On 6 May 1998, the plaintiff filed a writ summons and statement of claim against both defendants. The defendants' filed a defence and counterclaim on 3 July 1998 which was subsequently amended by Court Order dated 7 January 1999. A reply and defence to counterclaim was filed on 17 July 1998.

d 2. On 24 April 1999, the plaintiff was appointed Regent of Selangor to exercise the functions as "Sultan" when His Highness's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang DiPertuan Agong.

e 3. On 27 July 1999, the plaintiff's solicitors, Messrs Lim Kian Leong & Co., wrote to the attorney general's chambers to seek advice in respect of the further conduct of this matter. A response was received *vide* the letter dated 7 September 1999 from the attorney general's chambers stating that in light of His Highness's appointment as "Regent", further action is to be commenced in the Special Court and the consent of the attorney general will be required for the same. On 30 September 1999, the defendant's solicitors, Messrs Soo Thien Ming & Nashrah wrote to the attorney general's chambers for consent that the defendants continue their counter claim in the Special Court.

f 4. On 13 October 2000, both parties were granted audience with YB Tan Sri Datuk Sri Peguam Negara and issues of jurisdiction, among others, were discussed.

g 5. On 4 November 2000, the defendants' through their solicitors wrote to the attorney general's chambers expressing their reasons why the matter should continue in the High Court and not the Special Court and asking for confirmation that this matter be continued in the High Court and not the Special Court.

h 6. On 15 November 2000, a letter was issued by the attorney general's chambers indicating that this issue be determined by the High Court of Malaya.

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7. The defendants subsequently disagreed that the matter should proceed in the Special Court. The plaintiff filed two applications, one to withdraw the claim in the High Court with liberty to file afresh in the Special Court (“application to withdraw”) and the other to strike out the defendants’ counter claim. On 2 April 2001, the application to withdraw was heard by the learned senior assistant registrar and on 4 April 2001, she allowed the plaintiff’s application to withdraw with costs to be taxed (“the said order”). Both parties lodged their appeals on the said order. *a*
8. On 30 July 2001, the Honourable Judge, Mr. Justice Datuk Vincent Ng Kim Khoay by consent ordered that a constitutional reference be made to the Federal Court under s. 84 of the Courts of Judicature Act 1964 of the questions which are hereinbefore attached, p. 1 of the Record of Appeal. *b*
9. The application to strike out the counter claim, the appeals lodged by both plaintiff and defendants in respect of the said order is pending and is stayed in light of the reference. *c*
10. On 9 July 2001, the plaintiff filed their claim in the Special Court and the defendant entered Conditional Appearance on 19 July 2001. *d*
11. This matter is also stayed pending the reference to the Federal Court. *e*
- After hearing counsel for both parties, we gave an oral judgment answering question (1) in the negative and in view of our answer to question (1), there was no need really to answer the remaining questions. It merely means that arts. 181, 182 and 183 of the Federal Constitution (“Constitution”) in relation to the jurisdiction of the Special Court are not applicable to the plaintiff though he has been appointed as a Regent to exercise the functions of Sultan (Ruler) under art. 21(4) of the Laws of the Constitution of Selangor 1959, which reads: *f*
- (4) His Highness shall appoint a Regent or a Council of Regency, as to Him seems most expedient to exercise His function as Sultan in the event of His being elected to the office of the Yang di-Pertuan Agong or His exercising the functions of the office of the Yang di-Pertuan Agong for a period exceeding fifteen days. *g*
- It is to be noted that His Highness has a choice of appointing a council of Regency instead of a Regent under cl. 4 of art. 21. It is a matter of the prerogative of His Highness. *h*
- i*

- a* When the suit was filed in the High Court at Kuala Lumpur by the plaintiff His Highness was not appointed the Regent yet. The plaintiff was appointed the Regent on 24 April 1999 when His Highness's father was appointed the 11th Yang di-Pertuan Agong. It matters not to us about the status of the plaintiff at the time of the filing of the suit as the issue before us is
- b* the interpretation of "Ruler", that is, whether the plaintiff comes with the meaning of "Ruler" under art. 160 for the purposes of arts. 181, 182 and 183 of the Constitution.

As intimated, we now proceed to give our reasons.

- c* "Ruler" is defined under art. 160(2) of the Constitution:
- (a) in relation to Negeri Sembilan, means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State; and
- d* (b) in the case of any State, includes **except in Clause (2) of Article 181 and the Third and Fifth Schedules**, any person who in accordance with the Constitution of that State exercises the functions of the Ruler; (emphasis added)

Clause 2 of art. 181 in its original form reads:

- e* (2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity.

By the Constitution (Amendment) Act 1993 (Act A 848) which came into force on 30 March 1993 cl. 2 of art. 181 was amended by the insertion of the words "except in the Special Court established under Part XV" after the word "capacity". The amended art. 181(2) now reads:

- f* (2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity except in the Special Court established under Part XV.
- g* The purpose of the amendment to art. 181(2) clearly was to take away the legal immunity hitherto enjoyed by the ruler in respect of anything done or omitted to be done by him in his personal capacity. It seems clear to us that arts. 182 and 183 were added in view of the amendment to art. 181(2) which gives exclusive jurisdiction to the Special Court. These amendments were made at the proposal of the Conference of Rulers. We
- h* will touch on this later in this judgment.

Article 182 established the Special Court, the forum to hear any proceedings by or against the Ruler of a State in his personal capacity. Article 183 restricts the action, be it civil or criminal, against the Ruler

i of a State in respect of anything done or omitted to be done by him in

his personal capacity except with the consent of the Attorney General personally. The purpose of this provision is to protect the Ruler of a State against any frivolous or vexatious litigation. Articles 182 and 183 were added by Act A 848 and came into force on 30 March 1993. In short, any action or omission on the part of the Ruler of a State in his personal capacity, be it civil or criminal, the Special Court has the exclusive jurisdiction to adjudicate on them to the exclusion of the High Court.

We do not think it is beyond dispute that the original art. 181(2) is meant to accord legal immunity to the Ruler of a State and not to any person exercising the functions of a Ruler. This is clearly shown by the exception to the meaning of “Ruler” in art. 160(2) para. (b) of the Constitution which would otherwise include any person exercising the functions of the Ruler of a State.

The Federal Court in *Dato’ Menteri Othman bin Baginda & Anor v. Dato’ Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 had the occasion to consider art. 160(2) and the original art. 181(2) of the Constitution. Though the Federal Court there was dealing with, *inter alia*, the legal immunity issue in respect of the Ruling Chiefs of Negeri Sembilan it points to the fact that legal immunity is accorded to the Ruler and not extended to a person exercising the functions of a Ruler. This is what Salleh Abas, FJ (as he then was) in the majority judgment said at p. 35:

That the definition under Article 160(2) is a functional one is clearly reflected by the second limb of the definition as regards other states. Here while the definition of “Ruler” includes “as person who in accordance with the Constitution of that State exercises the functions of the Ruler”, it excludes such person from being regarded as a Ruler for the purpose of Article 181(2), (dealing with judicial immunity), the First **(should be Third?)** Schedule (dealing with the election of the Yang di-Pertuan Agong) and the Fifth Schedule (dealing with the Conference of Rulers). Such exclusion is effected by the words “except in Article 181(2) and the Third and Fifth Schedules”. Thus, for these purposes – ie, Article 181(2), the Third and Fifth Schedules the status of a Ruler who is a descendent of a royal ancestor is preserved and not extended to others. He is a Ruler in the full sense of the word, both functionally and status wise.

Further, Suffian, LP, in the same case, though delivering a dissenting judgment, put legal immunity as usually an attribute of sovereignty (see p. 38). Salleh Abas, FJ, himself was of the same view when he said at p. 35, thus:

- a* It is the sovereignty possessed by the Rulers which make them immune from judicial proceedings in their personal capacity.

We respectfully agree with the views expressed therein. It follows that a person exercising the functions of a Ruler of a State cannot be said to possess sovereignty. Sovereignty, in our view, is personal to the Ruler.

- b* Counsel for the plaintiff at p. 4 of her skeletal submission conceded that in regard to art. 181(2) the plaintiff is not considered a Ruler but contended that the plaintiff is a “Ruler” for the purposes of arts. 181(1), 182 and 183 of the Constitution. Simply put, the meaning of “Ruler” in art. 160(2) excludes the plaintiff from art. 181(2), the third and fifth schedules but not arts. 181(1), 182 and 183. The counsel for the plaintiff took, in our view, a literal approach to the interpretation of the relevant articles and at first blush, she would appear to be right.

- d* However, counsel for the defendants urged upon us to consider the purposive approach to remedy the anomaly or the mischief rule of interpretation ought to be used in the interpretation of the amended art. 181(2) and arts. 182 and 183. Can we adopt this approach?

- e* The purposive approach has been adopted by our courts following the English cases. Chang Min Tat, FJ, speaking for the Federal Court in *United Hokkien Cemeteries, Penang v. Majlis Bandaran, Pulau Pinang* [1979] 2 MLJ 121 in considering whether the columbarium should be exempted from assessment just like the cemetery grounds and the crematorium, stated at p. 123:

- f* The question of the determination of the exact nature and extent of a taxing act is rather different from that of the nature and extent of exemptory provisions. Then, in my view, it is a matter for the purposive approach to replace the literal. As was said by Lord Diplock in *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Torquay) Ltd* [1971] AC 850 at p. 899, the literal method of construction is now completely out of date and has been replaced by a “purposive approach”. It ought to be noted that this purposive approach is not a modern fashion. Since the 17th century, it has been the task of the judiciary to interpret an Act “according to the intent of them that made it”: Coke 4 Inst. 330.

- h* On the same page, His Lordship proceeded to quote a passage in *Northman v. Barnet Council* [1978] 1 WLR 221 where Lord Denning MR said at p. 228:

- i* In all cases now in the interpretation of statutes, we adopt such a construction as will ‘promote the general legislature purpose’ underlying the provision. It is no longer necessary for judges to wring their hands and say: ‘There is nothing we can do about it.’ Whenever the strict interpretation

of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it – by reading words in, if necessary – so as to do what Parliament would have done, had they had the situation in mind.

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This purposive approach has now been given statutory recognition by our Parliament enacting s. 17A in the Interpretation Acts 1948 and 1967 (Act 388) which reads:

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In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

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Recently, the Federal Court in a majority judgment in *Lam Kong Co. Ltd. v. Thong Guan Co. Ptd Ltd* [2000] 3 CLJ 769 Mohamed Dzaiddin, FCJ, (now CJ Malaysia) took the purpose or object of the legislature as provided by s. 17A of the Interpretation Acts 1948 and 1967 (Act 388) for the construction of s. 68(1)(a) of CJA on the ‘filter’ principle. In view of the statutory recognition we can and should adopt a purposive approach in the interpretation of “Ruler” for the purposes of arts. 181, 182 and 183.

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In pursuing the purposive approach, one of the matters that can assist this court in interpreting the amended art. 181(2) and arts. 182 and 183 of the Constitution is to refer to the Parliamentary reports or Hansard. This is permissible as held by the Federal Court in *Chor Phaik Har v. Farlim Properties Sdn. Bhd.* [1994] 4 CLJ 285. This is what Edgar Joseph Jr., FCJ, speaking for the court, after reviewing a number of cases from different jurisdictions, said at p. 299:

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We have also considered the cogent criticisms of the majority view in *Pepper v. Hart*, by Mr J H Baker in his article entitled ‘*Statutory Interpretation and Parliamentary Intention*’ [1993] 52 Lamb LJ 353; by Mr Brian Davenport in his article entitled ‘*Perfection – But At What Cost?*’ [1993] 109 LQR 149; and by Mr. David Miers in his article entitled ‘*Taxing Perks and Interpreting Statutes*’ [1993] 56 MCR 695. Nevertheless, we have arrived at the conclusion that we should follow the recent trend of the cases decided in the United Kingdom, Australia, New Zealand and Singapore and permit a relaxation of the exclusionary rule by allowing a reference to Hansard as an aid to statutory interpretation where the enactment is ambiguous or obscure, or which if literally construed might lead to absurdity and provided always that the statement reported in Hansard was made by a Minister or other promoter of a Bill. More particularly, we gratefully adopt the passage in the judgment of Lord Browne – Wilkinson in *Pepper v. Hart*, reproduced above.

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- a* The passage quoted with approval in *Pepper v. Hart* [1993] 1 All ER 42 at p. 64; [1992] 3 WLR 1032 at p. 1056 A-C by Edgar Joseph Jr., FCJ, is at p. 359:

b My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modifications to the existing rule (subject to strict safeguards) unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity.

c Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee any statement other than the statement of the minister or other promoter of the Bill is likely to meet these criteria.

- d* However, we note and agree with the caution put forth by Edgar Joseph Jr., FCJ, on the same page as follows:

e We hasten to add, however, that when resort to Hansard is permissible, that by itself although meriting serious consideration cannot be determinative of the issue since it is only available as an aid to interpretation. To hold otherwise, would amount to substituting the words of the Minister or other promoter of the Bill for the words of the statute, and that cannot be the law.

- f* We also note that Singapore courts have followed the majority judgment in *Pepper v. Hart*. Indeed the rule in *Pepper v. Hart* has now received statutory recognition in Singapore by way of s. 2 of the Interpretation (Amendment) Act 1993. May be it is time such a provision be given statutory recognition in our Interpretation legislation as with s. 17A referred to earlier. It will give statutory force to the courts to look at the policy speech of the Minister or the promoter of the Bill in the Hansard for the purpose of an aid to the interpretation of statutes.
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h Before proceeding to consider the purposive approach as urged upon us by counsel for the defendants, we need to give consideration to the submission of counsel for the plaintiff on the interpretation of “Ruler” for the purposes of arts. 181, 182 and 183 of the Constitution. The issue is whether the said articles are ambiguous or obscure or the literal meaning of which leads to absurdity. The argument of counsel for the plaintiff was put this way.

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The meaning of “Ruler” in art. 160(2) of the Constitution does not refer to the Ruler of a State *per se*, but also **includes** any person who in accordance with the Constitution of a State exercises the functions of the Ruler. It was therefore submitted that the plaintiff as the Regent who exercises the functions as Sultan (ie, the Ruler of the State) by virtue of art. 21 of the State Constitution of Selangor, comes within the meaning of “Ruler” in art. 160(2) para. (b). It was, however, conceded by the counsel for the plaintiff that in the meaning of “Ruler” in para. (b) of art. 160(2) there are three circumstances where, as she put it, this wide meaning of “Ruler” is excluded:

(a) Article 181(2);

(b) The Third Schedule;

(c) The Fifth Schedule.

She concluded that the plaintiff, therefore, is a “Ruler” for the purposes of art. 181, art. 182 and art. 183 of the Constitution though for the purposes of art. 181(2) she conceded that the plaintiff is not considered a “Ruler”. We would for completeness add that for the purposes of the Third Schedule (dealing with the election of the Yang di-Pertuan Agong) and the Fifth Schedule (dealing with the Conference of Rulers) the plaintiff is not considered a “Ruler” as well. Her contention is that the meaning of “Ruler” in art. 160(2) para. (b) was not amended to exclude arts. 182 and 183 like art. 181(2). In other words, art. 160(2) remains intact.

Counsel for the defendants argued that the literal interpretation adopted by the counsel for the plaintiff on the meaning of “Ruler” for the purposes of arts. 181, 182 and 183 would lead to an undesirable situation or absurdity. He put his argument in this way.

It is not disputed that prior to the amendment of art. 181(2) and the addition of arts. 182 and 183, only the Ruler of a State enjoys legal immunity by virtue of the exception given to the meaning of a “Ruler” in para. (b) of art. 160(2) of the Constitution. The legal immunity does not extend to a person exercising the functions of a Ruler like the case of the plaintiff. This is the situation prior to the amendment and the addition of the relevant Articles of the Constitution.

Granted that the meaning of “Ruler” in art. 160(2) remaining intact, it can give rise to two interpretations of “Ruler” for art. 181(2) and arts. 182 and 183:

- a* (a) Article 181(2) does not extend to a person exercising the functions of the Ruler.
- (b) Articles 182 and 183 would appear to include a person exercising the functions of the Ruler.
- b* That is if the literal approach of interpretation is taken. Such an interpretation would lead to an ambiguity and absurdity as a Regent exercising the functions of the Ruler is not a Ruler for the purposes of art. 181(2), the Third Schedule and the Fifth Schedule and hence the Regent can be sued in the ordinary courts as the establishment of the
- c* Special Court by the amendment to art. 181(2) is exclusively reserved to the Rulers personally in respect of actions in their personal capacity but for the purposes of art. 182 and 183, he is the Ruler and shall sue or be sued in the Special Court for the reason that the meaning of “Ruler” in art. 160(2) para. (b) remain intact.
- d* We then have the awkward situation where art. 181(2) excludes the Regent who exercises the functions of the Ruler from the jurisdiction of Special Court and he is within the jurisdiction of the ordinary courts for actions in his personal capacity whereas arts. 182 and 183 would appear to confer the jurisdiction of the Special Court exclusively to him as well when
- e* exercising the functions of the Ruler by virtue of art. 182. Article 182(2) reads:
- Any proceedings by or against the Yang di-Pertuan Agong or the Ruler of a State in his personal capacity shall be brought in a Special Court established under Clause (1).
- f* This ambiguity will lead to problems to the ordinary citizens who wish to sue the Regent, that is, which provision shall prevail, art. 181(2) of the Constitution read with art. 160 or art. 182(2) and art. 183 of the Constitution.?
- g* There is the further absurd situation herein. As stated earlier in this judgment, there is the prerogative of the Ruler to appoint a Council of Regency as well. We have examined the constitution of all the Malay States and this provision is common to all the Malay States. In the event a Council of Regency is appointed in place of a Regent, is it intended that
- h* the members of the Council of Regency when collectively exercising the functions of the Ruler is a “Ruler” for the purposes of arts. 181, 182 and 183? A member of the Council of Regency need not be appointed from members of the Royalty and is it intended therefore that an ordinary person as in the case of Trengganu recently, as was told to us by the counsel for
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the defendants, would come within the meaning of “Ruler” also? With respect, we did not think so as it will lead to absurdity. By way of analogy, the reasoning in *Dato’ Menteri Othman’s* case regarding legal immunity to the Ruling Chiefs would support our view.

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In order to resolve the ambiguity or absurdity situation, we need to consider the purpose or object of establishing the Special Court, that is, whether the exclusive jurisdiction of the Special Court to try offences committed in the Federation by the Ruler of a State and all civil cases by or against the Ruler of a State notwithstanding where the cause of action arise is to include a person exercising the functions of the Ruler of a State as in the case of the plaintiff here?

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As stated earlier s. 17A of the Interpretation Acts 1948 and 1967 (effective from 24 July 1997 *vide* Act A996/97) now permits for a purposive approach quite apart from the authorities cited earlier on. It has been given, so to say, statutory recognition. A reading of arts. 182 and 183 under Part XV of the Constitution showed the composition, jurisdiction, powers, procedure of the Special Court including the requirement of the consent of the Attorney-General personally in respect of action, civil or criminal, to be instituted against the Ruler of a State in respect of anything done or omitted to be done by him. These are matter of details.

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The important matter that need to be considered is the purpose or object of the establishment of the Special Court, which is the amendment to art. 181(2). Once the object or purpose is determined it follows, in our view, that the Special Court stated under Part XV must necessarily be read with the object or purpose of the amendment to art. 181(2). Such a construction will promote the general legislative purpose underlying the provision in line with s. 17A of the Interpretation Acts 1948 and 1967. Once such a construction is given, the word “Ruler” in arts. 182 and 183 should and must mean “Ruler” referred to in art. 181(2) read with art. 160(2) para. (b). As is not disputed “Ruler” under art. 160(2) para. (b) for the purposes of art. 181(2) excludes a person exercising the functions of the Ruler and it follows that “Ruler” under arts. 182 and 183 is not intended to include a person exercising the functions of the Ruler as in the case of the plaintiff. The exclusive jurisdiction of the Special Court as envisaged in the amendment to art. 181(2) is to be accorded to the Ruler and not to a person exercising the functions of the Ruler by virtue of the exception to art. 160(2) para. (b) of the Constitution. To read art. 182(2) in isolation without reference to the intent and purpose of the amendment to art. 181(2) would lead to an absurd situation. As conceded by the counsel for the plaintiff art. 181(2) does not cover a person exercising the functions of the Ruler

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- a* and the amendment to art. 181(2) giving the exclusive jurisdiction of the Special Court to the Ruler of a State therein similarly cannot be intended to include a person exercising the functions of the Ruler as in the case of the plaintiff.
- b* In addition thereto, it is permissible for the courts, as held by the Federal Court in *Chor Phaik Har, supra*, to resort to the Hansard as an aid to interpretation. We can therefore look at the policy speech of the Minister when tabling the Bill for the purpose or the object of the Bill as an aid to interpretation.
- c* The Bill to amend the Constitution was first moved by the Prime Minister on 18 January 1993. In his speech, the Prime Minister touched on the history of the Rulers from the time of the British Rule and concluded that legal immunity was accorded to the Rulers in view of the sovereignty possessed by the Rulers. However, in view of the happening of certain events involving one or two Rulers, the Government thought it was time
- d* that the citizen be given protection and further, the role of a Ruler being a Constitutional one, the legal immunity hitherto enjoyed by the Rulers in their personal capacity should be removed.
- e* The Bill of 18 January 1993 in its original form for the purpose of the removal of the legal immunity, *inter alia*, proposed amendments to arts. 32 and 181 of the Constitution. The original proposed amendments to art. 181 as per cl. 7 of the Bill read:
- f* (a) in Clause (2), by substituting for the words “in his personal capacity” the words “in respect only of anything done or omitted to be done by him in the exercise or purported exercise of his functions under any written law”; and
- (b) by inserting, after Clause (2), the following Clause:
- g* (3) Any law which provides for the immunity of the Ruler of a State in his personal capacity from any proceedings whatsoever in any Court, or attaches sanctity to his residence, shall to that extent be void.
- A saving provision was provided by cl. 8 which reads:
- h* For the avoidance of any doubt, it is hereby declared that no proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity in respect of anything done or omitted to be done by him before the coming into force of this Act.
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It is clear therefore that the intention of the legislature in the proposed amendments was to remove altogether the legal immunity hitherto given to the Ruler of a State. It means that any legal proceedings by or against the Ruler in his personal capacity will be within the jurisdiction of the ordinary courts just like the ordinary citizen. The Ruler's legal immunity is preserved in respect of his functions under any written law.

The Bill was accordingly passed by Parliament. However, when the Bill was sent to the Yang di-Pertuan Agong for His Highness's assent, the Prime Minister informed Parliament that the Conference of Rulers, through the Yang di-Pertuan Agong, gave the reasons why no assent could be given and suggested amendments for the consideration of Parliament. It was in this situation that the Prime Minister moved the Bill again on 8 March 1993 and taking into consideration the proposals of the Conference of Rulers moved in Parliament for art. 181(2) be amended and arts. 182 and 183 under a new Part XV be added. The proposed amendments and additions were subsequently passed by Parliament.

This is what the Prime Minister said, *inter alia*, at p. 13986 of the Hansard in moving the Bill again on 8 March 1993:

Sekarang ini diperuntukkan suatu badan khas untuk membicarakan Raja-raja yang melakukan kesalahan di bawah undang-undang negara. Mahkamah Khas yang ditubuhkan ini bukan untuk rakyat, tetapi untuk Raja. Ini tidak melucutkan keistimewaan Raja daripada segi tidak boleh didakwa di mahkamah biasa, tetapi menambah keistimewaan itu dengan mewujudkan satu mahkamah yang khas bagi Raja.

From the above passage and from a perusal of the speech of the Prime Minister it is clear that no mention was made at all that the exclusive jurisdiction given to the Special Court to the exclusion of the ordinary courts in respect of the ruler is to include a person exercising the functions of the ruler. Clearly the object or purpose of the amendment to art. 181(2) and the addition of arts. 182 and 183 was a compromise to the rulers where their legal immunity was taken away in respect of any legal proceedings in their personal capacity. The mischief that was aimed by the amendment to art. 181(2) and the addition of arts. 182 and 183 clearly was to take away the legal immunity hitherto enjoyed by the rulers and the establishment of the Special Court was a compromise. If the literal approach of interpretation is taken as submitted by the counsel for the plaintiff it will lead to absurdity for the reasons stated earlier on.

For the record, Dato' Abdul Aziz, senior federal counsel, appearing for the attorney-general by way of watching brief, supported the submission of counsel for the defendants.

a In the circumstances and for the reasons stated, we answered the first question in the negative. In view of our answer to the first question, there would be no need really to answer the remaining question as it is clear that only the rulers and not the persons exercising the functions of the rulers have the exclusive recourse to the Special Court.

b By consent, each party agreed to bear his own costs of the proceedings before us.

My learned Chief Judge Malaya, has seen my judgment and agreed with the reasons stated therein.

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